IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.323 of 1992.

Date of decision: October 01, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Asha Ram and others. ……. Respondents.

Coram

The Hon'ble Mr.Justice Surjit Singh, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.S.D. Vasudeva Addl. Advocate General with Mr. D.S.Nainta, Dy. Advocate General.

For the respondents: Mr. Vinay Thakur, Advocate.

Surjit Singh, J(oral):

Heard and gone through the record.

The respondents were sent up for trial for offences punishable, under Sections, 147, 148, 323, 325, 326, 506 read with Section 149 of the Indian Penal Code, for allegedly forming an unlawful assembly with the common object of dispossessing PW-1 Ashwani Kumar from the land bearing khasra No.105, situate in village Shiv Shanker Garh, Police Station Kandaghat and assaulting said PW-1 Ashwani Kumar and his wife PW-2 Pushpa Devi, in prosecution of the aforesaid common object and causing them injuries by means of darat and dandas etc. As per prosecution, the respondents armed with dandas and darat etc.,

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Whether reporters of local Papers may be allowed to see the judgment?

went to the land comprised in khasra No.105 on 5.4.1991 around 5 p.m., when PW1 Ashwani Kumar and his wife PW-2 Pushpa Devi were harvesting mustard crop and tried to carry away the bundles of harvested crop. When they were asked not to take away the harvested crop, they assaulted the couple and caused number of injuries to them by means of dandas and darat. One of the blows given by respondents caused fracture of the wrist joint of Ashwani Kumar and the said injury was found to be grievous in nature by the Doctor during the course of his medico legal examination.

Trial court acquitted the respondents, holding that there was a dispute between the parties as to the possession of the land and that the witnesses examined by the prosecution to support its version were interested. The respondents took the plea that they were in possession of the land and PW-1 Ashwani Kumar and his wife PW2 Pushpa Devi were the aggressors.

We have heard the learned Additional Advocate General and gone through the record.

The respondents proved on record a copy of judgment Ext.DX, delivered by the civil court in a suit filed by one Sarswati Devi. Ashwani Kumar, while in the witness box admitted that he was the attorney of Sarswati Devi in that suit. According to the judgment, Sarswati Devi claimed that she was owner in possession of khasra No.105, but the respondents without any right, title or interest, interfered in her possession. She prayed for the relief of permanent prohibitory injunction. Civil Court dismissed the suit holding that the plaintiff was not in possession.

In the light of this judgment and the finding of the civil court, the plea of Ashwani Kumar and his wife Pushpa Devi that they were in possession of the suit land and that the respondents

wanted to forcibly oust them from the said land cannot be believed. If it is so, no fault can be found with the judgment of acquittal rendered by the trial court. If Ashwani Kumar and his wife were not in possession and still they were harvesting the crop of mustard standing thereon, the respondents were well within their rights to take away the harvested crop and to prevent the couple by use of reasonable force from harvesting the remaining crop.

In view of the aforesaid findings, the appeal is dismissed.

(Surjit Singh)
Judge.

October 01, 2007
(PDS)

(Surinder Singh)
Judge.